



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

WMP

Docket No: 1541-01

13 May 2002

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 May 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 2 April 1990 for four years at age 22. Before enlisting, you denied receiving any treatment for a medical condition and denied any pre-service drug abuse.

The record reflects that you served without incident until 24 October 1990 when you received non-judicial punishment for failure to be at your appointed place of duty. The punishment imposed was forfeiture of \$150 and restriction for 30 days. Additionally you were counseled and warned concerning your failure to be at your appointed place of duty. You were additionally warned of the consequences of further deficiencies, including possible administrative separation processing.

On 28 June 1991, you were advised of your ineligibility for a security clearance due to disqualifying information,

specifically, you were hospitalized from 14 August to 29 August 1989 and diagnosed with schizophreniform disorder, but failed to disclose this hospitalization and diagnosis prior to your enlistment.

Additionally, during an interview on 14 September 1990, you stated that you consumed between six to fifteen beers daily and during subsequent interviews on 12 December 1990, and on 14, 15 and 19 February 1991, you admitted smoking marijuana on weekly basis during a six month period in 1982 and 1983, and again between January 1987 through September 1989. You further stated that you obtained marijuana without charge from friends but once traded a radio, valued at \$60, for the drug. You also stated that you were present on a number of occasions for cocaine sales and, on one occasion, acted as a "middleman" during a sales of cocaine. Subsequently, you admitted that you concealed information in the interview of 12 December 1990 out of fear that full disclosure would result in denial of a security clearance.

On 12 November 1990, you were notified that separation action was being initiated by reason of defective enlistment and induction due to fraudulent entry. At this time, you were advised of and waived all of your procedural rights, with the exception of the right to obtain copies of documents used to support the basis for separation. On 27 November 1991, you received a general discharge by reason of defective enlistment and induction due to fraudulent entry and assigned an RE-4 reenlistment code.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your contentions that your pre-service activities had no bearing on your character of service, your medical condition and lack of education made you incapable of responding to the questions in your enlistment documents, and your good post service conduct. However, the Board concluded that you purposely withheld vital information concerning your medical condition, and drug and alcohol abuse. This information, if known, would have made you ineligible for enlistment. Additionally, after these facts came to light during your security investigation, you again withheld information, while under oath, during your interview conducted on 12 December 1990. The Board concluded that these acts of

withholding information and your failure to fully account for your actions while under oath do, in fact, have a bearing on the character of your service. Finally, under regulation, in effect at the time, an honorable discharge was not authorized for individuals separated by reason of fraudulent enlistment. Based on this information the Board concluded that your record supports a general discharge, and it should not be upgraded to fully honorable.

At the time of your service, 38 USC 3011 stated that a servicemember who enlisted for a four year active duty commitment must complete a minimum of three years of continuous active duty in order to be eligible for basic educational benefits under the Montgomery G.I. Bill (MGIB). An individual must receive a fully honorable characterization of service in order to receive benefits. Additionally, this provision of law also states that, "Any amount by which the basic pay of an individual is reduced shall be revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual." Based on the foregoing, you are neither eligible to receive basic educational benefits nor are you eligible to receive a refund of the amount you contributed to the MGIB.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director